Chapter 4
Consultation and Coordination

4.1 Agencies and Individuals Contacted

Arrowhead River Adventures, Eagle Point, Oregon – Don Kirkendall, Owner
Bureau of Land Management, John Day, Oregon – John Morris, Fish Biologist
Bureau of Land Management, Prineville, Oregon – Jan Hanf, District Wildlife Biologist
Bureau of Land Management, Prineville, Oregon – Heidi Mottl, Recreation Planner
Bureau of Reclamation, Boise, Idaho – Lynne MacDonald, Regional Archeologist
Bureau of Reclamation, Portland, Oregon – David Nelson, Native American Affairs
Confederated Tribes of the Umatilla Indian Reservation, Pendleton, Oregon – Carl Sheeler, Wildlife Habitat Program
Confederated Tribes of the Umatilla Indian Reservation, Ukiah, Oregon – Tom Macy
Confederated Tribes of the Warm Springs Reservation of Oregon, Canyon City, Oregon – Shaun Robertson, 2001 Subbasin Liaison
Confederated Tribes of the Warm Springs Reservation of Oregon, Canyon City, Oregon – Brent Smith, Habitat Manager
Grant Soil and Water Conservation District, John Day, Oregon – Ken Delano, District Manager
Little Creek Outfitters, LaGrande, Oregon – John Ecklund, Owner
National Marine Fisheries Service, LaGrande, Oregon – Brett Farman, Habitat Biologist
National Marine Fisheries Service, Portland, Oregon – Larry Swenson, Fish Screen Engineer
Oregon Department of Fish & Wildlife, Canyon City, Oregon – Jeff Neal, Assistant District Fish Biologist
Oregon Department of Fish & Wildlife, Canyon City, Oregon – Tim Unterwegner, District Fish Biologist
Oregon Department of Fish & Wildlife, Corvallis, Oregon – Bernie Kepshire, Statewide Fish Screen Coordinator
Oregon Department of Fish & Wildlife, John Day, Oregon – Steve Allen, John Day Screen Shop Manager
Oregon Department of Fish & Wildlife, John Day, Oregon – Joe Vawter, OWEB Project Coordinator
Oregon Department of Fish & Wildlife, John Day, Oregon – Steve Corwin, John Day Screen Shop Engineering Technician
Oregon Natural Heritage Program, Portland, Oregon – Cliff Alton, Conservation Information Assistant
Oregon Water Resources Department, Canyon City, Oregon – Eric Julsrud
Oregon Water Resources Department, Canyon City, Oregon – Kelly Rise, Watermaster
Oregon Water Resources Department, Salem, Oregon – Bob Devyldere, Information Systems Manager
Oregon Water Resources Department, Salem, Oregon – Bob Rice, Coordinator
U.S. Fish and Wildlife Service, Portland, Oregon – Chris Allen, Fish and Wildlife Biologist

U.S. Fish and Wildlife Service, Portland, Oregon – Stacy Stroufe
U.S. Forest Service, John Day, Oregon – Jerry Hensley, Malheur Forest Planner

4.2 Tribal Consultation and Coordination

On a programmatic level, Reclamation meets regularly with various interested parties to provide updates on implementation of its responsibilities under the FCRPS BiOp. Among these parties is the Columbia River Inter-Tribal Fish Commission, which represents the four lower Columbia River tribes – Nez Perce, Umatilla, Warm Springs, and Yakama – that signed treaties with the United States in 1855. These programmatic meetings will continue to be held throughout the duration of the habitat improvement program.

Specific to the John Day Basin, cooperation and collaboration with the on-going habitat restoration programs of the Warm Springs and Umatilla Tribes will be critical to program accomplishment. Reclamation has supported the Warm Springs' habitat restoration office since it was established in the John Day Basin in the mid-1990's and has initiated discussions with the Umatilla tribal staff to determine how best to coordinate program activities. Reclamation will continue to work with these tribes to collaborate on habitat restoration projects.

As specific projects are identified, Reclamation will consult as necessary with tribes to determine whether TCPs or sacred sites may be impacted. If National Register-eligible TCPs are present, appropriate mitigation measures would be determined through these consultations. Reclamation will seek to avoid sacred sites. If human remains are inadvertently discovered during construction, work in the immediate vicinity of the discovery will cease except to secure and protect the remains. Reclamation will contact tribes as required to determine appropriate procedures for consultation and treatment of the human remains. Reclamation will also carry out any other applicable measures of the state of Oregon burial laws.

4.3 National Historic Preservation Act Consultation

As specific projects are identified, Reclamation will determine if a project has the potential to impact historic properties. If that potential is determined to exist (i.e., if the project is an undertaking under NHPA), then all consultation and coordination activities required by Section 106, 36 CFR 800 will be implemented. This might include consultation with SHPO and interested Indian tribes on resource significance, and treatment of adverse impacts. Consultations and impacts mitigation actions will be documented in a memorandum of agreement signed by consulting parties.

4.4 Environmental Consultation and Permit Requirements

4.4.1 Environmental Consultation

Section 7 of the ESA requires federal agencies that propose an action, which could affect an ESA-listed species, to consult with the appropriate federal regulatory agency. NMFS is the federal regulatory agency responsible for anadromous fish. USFWS is the federal regulatory agency responsible for plants and terrestrial, avian, and resident aquatic animals. ESA-listed species are present in all three of the John Day subbasins. The analysis in this PEA serves as Reclamation's BE for Section 7 consultation requirements with USFWS and NMFS under the ESA for the overall program of habitat improvements under Action 149 of the 2000 NMFS BiOp.

For fish, Reclamation has determined that implementation of the proposed action will have "No Effect" to listed fish in the project area except for Mid-Columbia River steelhead and Columbia River bull trout, for which the conclusion is "May Affect, Not Likely to Adversely Affect" (Table 21). The proposed action will occur in the upper subbasins and their effects are largely local, such that most effects will not be measurable in the lower John Day River or the Columbia River. In the project area, however, improved fish passage at barriers, protection from direct loss in irrigation systems, and improved flow and habitat conditions will directly and indirectly improve the survival of steelhead and bull trout. The potential for any short-term negative effects from construction will be minimized via the applicable restrictions.

For wildlife, Reclamation has determined that implementation of the proposed action will have "No Effect" to listed species except the bald eagle. For bald eagle, the "May Affect, Not Likely To Adversely Affect" (Table 21) determination considers that many actions will occur distant from nesting or winter-roosting sites. In addition, a January 1st through August 31st restriction on construction disturbance within ¼-mile of an active nest site will protect a site. See section 3.6.3 for full details on mitigation around bald eagle active nests and active winter roosts.

Table 21. Summary of Effects of Proposed Action on Species Protected under the ESA.

Protected ESU	Biological Evaluation Conclusion	Primary Reasons
Mid-Columbia River steelhead	Not Likely to Adversely Affect	Improved passage, screening, and flow will facilitate fish movement, reduce direct and indirect fish mortality, and increase habitat quality. Construction restrictions will minimize potential for temporary adverse affects.
Columbia River bull trout	Not Likely to Adversely Affect	Improved passage, screening, and flow will facilitate fish movement, reduce direct and indirect fish mortality, and increase habitat quality. Construction restrictions will minimize potential for temporary adverse affects.
bald eagle	Not Likely to Adversely Affect	Construction restrictions will minimize potential for temporary adverse affects.

The analysis in this PEA serves as Reclamation's BE for the habitat improvement actions described in the document and will be used in programmatic consultation with NMFS and USFWS. The purpose of programmatic consultation is to obtain from NMFS and USFWS a programmatic BiOp to identify specific projects that would not require further Section 7 consultation.

Coordination on fish and wildlife issues to meet the requirements of the Fish and Wildlife Coordination Act (FWCA) and the ESA was accomplished by informal consultation with the USFWS and NMFS. Continued coordination with NMFS and USFWS will be needed to resolve ESA issues regarding listed salmon, steelhead, and bull trout. Based on discussions with NMFS and USFWS concerning the types of flow, screen, and barrier projects to be implemented, Reclamation concluded that a "may affect, but unlikely to adversely affect" determination is anticipated for most projects. Consequently, Reclamation will develop a programmatic BA for implementation of Action 149 in Oregon and will continue to consult with NMFS and USFWS. The programmatic BA is intended to provide a basis to obtain concurrence from NMFS and USFWS on the types of projects expected to be implemented that would not require additional consultation and identify the types that would. A mitigation strategy will be developed with NMFS and USFWS for each type of project. For some types of projects no additional consultation will be required beyond any terms and conditions specified in the BiOp developed in response to the programmatic BA; other types of projects will require individual consultation and could include preparation of a site-specific BA with an associated BiOp that could include site-specific terms and conditions.

As Reclamation, NMFS, and USFWS become more experienced with project-specific consultation, additional types of projects may be considered and identified for programmatic consultation. The programmatic consultation could be amended to include these additional types of projects and any new terms and conditions. Reclamation then would be able to implement these additional types of projects without further Section 7 consultation. Prior to implementation of specific projects, coordination will occur with NMFS and USFWS.

Reclamation will complete ESA consultation with NMFS and USFWS before initiating any action that would result in irretrievable and irreversible commitment of resources. This includes consultation at both a programmatic level and for site-specific projects.

4.4.2 Permit Requirements

In addition to the mitigation measures presented in Section 2.2.5 and throughout Chapter 3, there are permit requirements for certain activities proposed under this PEA. It should be noted that all in-stream work must adhere to ODFW's in-stream work period requirements. These work periods are detailed in Section 2.2.5 of this document.

Following are the permit requirements for each of the proposed actions:

Installation of LFSDs and infiltration galleries. A Section 404 (of the Clean Water Act) Removal/Fill Permit is required. This permit is applied for jointly with the DSL and the COE. In almost all cases, the response by the COE is "Discharges of dredged or fill material into waters of the United States associated with the construction or maintenance of irrigation ditches, including diversion structures that are appurtenant and functionally related to the irrigation ditch, are exempt from Corps (U.S. Army Corps of Engineers) regulations under Section 404 of the Clean Water Act." The DSL, however, does not exempt these projects (ORS 196.795-990). Requirements of DSL must still be met before obtaining a permit for installation of LFSDs and infiltration galleries.

In addition, the installation of LFSDs and infiltration galleries must adhere to NMFS guidelines for upstream salmonid passage at small diversion dams (see Table 4). Screens on infiltration galleries must comply with NMFS juvenile fish screen criteria (see Appendix D).

Installation of permanent pump stations. Section 404 Removal/Fill Permits are not required, unless the installation includes streambank disturbance. Either way, screens on pumps must comply with NMFS juvenile fish screen criteria for pump intakes (see Appendix C).

Consolidation of diversions. Section 404 Removal/Fill Permits are required if the consolidation involves removal and/or fill in the waters of the state. Consolidation of diversions would also require a Transfer Application for a Change in Point of Diversion to be filed with the OWRD for the downstream ditch diversions to be moved to the common diversion point. If the point of diversion moves more than ¼ mile or crosses another point of diversion, advertising the proposed change is required.

Acquisition of water for in-stream flow. An application and administrative process through Oregon Water Resources Department must be followed in order to split off seasonal use of, transfer, lease, or cancel a water right of record. However, no formal permits are required.

Replacement of headgates. Replacement of existing headgates is considered a repair, which does not require any permits.

Installation/Replacement of fish screens. Installation and replacement of fish screens does not require any permits. However, a Section 404 Removal/Fill Permit is required where a fish screen installation takes place in a jurisdictional wetland. Typically wetlands are avoided for fish screen installations.

Surface water fish screens (rotary and other designs) as well as screens on permanent pump stations require adherence to NMFS juvenile fish screen criteria (see Appendices D and C, respectively).

Other requirements. An in-water blasting permit would be required from ODFW if bedrock or a very large boulder were encountered and it needed to be broken to install any structures, such as a LFSD. Blasting of this nature is very rare. A new technology exists that accomplishes the same thing, and does not require blasting. This technology is called slow acting S-mite or "boulder blasters" that use a modified shotgun shell.

A cultural resources survey is required on all federally funded projects.

4.5 Public Involvement

Section 1.3 above describes the public scoping process used to develop this PEA. Scoping activities have been documented in the "Scoping Document for Programmatic Environmental Assessment for Implementation of Action 149 of the NMFS 2000 FCRPS BiOp in Three Subbasins of the Mid-Columbia Steelhead ESU in Eastern Oregon", dated June 2002, which is stored in the administrative file for this PEA, along with mailing lists used in the public involvement process.

The draft PEA was made available for public review and comment at the local John Day library. Hard copies were sent via conventional mail to the scoping meeting invitees (as invited by the Lower Columbia Area Office), scoping meeting attendees, individuals registering for draft PEA mailings, stakeholders as identified by the Subbasin Liaison, and other individuals requesting the draft PEA via the PEA contractor.

Four separate comments were received during the public comment period. Those comments and Reclamation's responses are included in Appendix X.

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APPENDICES